UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GEORGE GUINDON et al.,	)	
	)	
Plaintiffs,	)	
	)	**C.A. NO. 03-335-L**
VS.	)	
	)	
AMERICAN FOAM CORPORATION et al.,	)	
	)	
Defendants.	)	

AFFIDAVIT OF JOHN M. HOFFMANN, Ph.D., IN SUPPORT OF RULE 12(b)(6) MOTION TO DISMISS OF FOAMEX INTERNATIONAL INC.

John M. Hoffmann, being first duly sworn, states as follows:

1. I am a Fire Scientist and hold an undergraduate degree in Chemistry and a graduate degree (Ph.D.) in Weapons Systems Engineering with a specialty in Organic Chemistry. While on active duty with the United States Navy, I participated in the study and investigation of fires and explosions aboard naval ships and aircraft. Following retirement from the Navy, I directed the safety programs for the Parke-Davis Company, a division of Warner Lambert Company, which included extensive fire safety programs for the prevention of fires and protection from fires.

2. In 1985, I founded Safety Engineering Laboratories ("SEL") for the purpose of investigating and reconstructing fires, conducting fire tests on a wide array of materials/chemicals and providing expert testimony in matters related to LP and natural gas fires and explosions, chemical fires and explosions, plastics fires, flammable and combustible liquid fires, and industrial, commercial, and residential structural fires. Among the mass disaster fires I have investigated are the San Juan Dupont Plaza Hotel fire in Puerto Rico, the MGM Grand and Hilton Hotel fires in Nevada, the PEPCON ammonium perchlorate chemical plant explosion in Nevada, and the One Meridian Plaza fire in Pennsylvania.

3. From 1985 until 2000, I was the President of Safety Engineering Laboratories and am currently Chairman of the Board of Directors. I have worked for both plaintiffs and defendants and have testified in State and Federal District courts in more than 35 states, Puerto Rico, Canada, Columbia and South America. Safety Engineering Laboratories has conducted fire-related testing for major trade organizations such as the Consumer Electronics Association (CEA) and the Chemical Manufacturers Association (CMA). SEL also has conducted fire testing on a variety of consumer

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products, household chemicals, and materials capable of causing spontaneous ignition (combustion) for individual companies and in support of litigation.

4. SEL and I have been retained by counsel for defendants in the litigation styled above to investigate, examine and analyze the February 20, 2003 fire (the "Fire") at The Station nightclub (the "Nightclub").

- Commencing on or about April 2, 2003 and continuing until approximately May 6, 2003, SEL and I investigated and participated in the tagging and removal of over 700 artifacts from the fire scene.

- I have examined videotapes depicting how the Fire ignited and spread, and the Nightclub crowd's reaction to the Fire.

- I have reviewed and am familiar with statements made and conclusions drawn by the wide array of fact witnesses to the fire, local and state fire marshals, crowd consultants, ingress/egress experts, and other professional fire investigators who have commented in media reports since the date of the Fire regarding the building and its exits and construction, the fire and its origin, code violations and the nature in which the fire grew, developed and extinguished.

- I have reviewed Town of West Warwick Fire and Police Department documents pertaining to overcrowding problems at the nightclub, noise complaints, 2000-2002 building inspections, and reports, commentary and testimony relating to the Fire prepared by or on behalf of the National Institute of Standards and Technology and the National Fire Protection Association.

For these reasons, and based on my years of training, skill and experience, I have personal knowledge of the following facts and am competent to make this affidavit.

5. The Derderians claim to have purchased approximately 540 square feet of low density foam from American Foam Corporation ("American Foam"). American Foam has produced to the Rhode Island Attorney General a June 27, 2000 invoice along with (a) a General Foam Corporation Product Data Sheet designated 36000XXX, and (b) a GFC Material Safety Data Sheet for flexible polyurethane foam dated January 1997.

6. Polyurethane foam is used for hundreds of practical everyday purposes from carpet pads and seat cushions, to numerous applications in the automobile industry, to the shipping and packaging industry. Foam is well-regulated, yet none of the applications just referenced require foam to be flame retardant. GFC's sales documentation, which accompanied its products when shipped to its customers, including American Foam, contained a warning about the flammability of polyurethane foam, stating:

WARNING! POLYURETHANE FOAM IS FLAMMABLE.

IMPROPER HANDLING OF FLEXIBLE POLYURETHANE FOAM DURING STORAGE OR USE MAY PRESENT A RISK OF FIRE. DO NOT EXPOSE POLYURETHANE FOAM TO POTENTIAL SOURCES OF IGNITION SUCH WELDING, BURNING CIGARETTES, CONTACT WITH NAKED LIGHTS, OPEN FLAMES, SPACE HEATERS, OR UNCONTROLLED BURNING OPERATIONS. IN THE EVENT OF IGNITION, POLYURETHANE FOAM MAY BURN RAPIDLY.

PRECAUTIONS FOR STORAGE AND HANDLING:

USERS SHOULD TAKE APPROPRIATE PRECAUTIONS IN THE STORAGE AND HANDLING OF THIS MATERIAL AND FOLLOWING APPLICABLE LOCAL BUILDING CODES, FIRE ORDINANCES, AND INSURANCE REGULATIONS. MINIMUM PRECAUTIONS SHOULD INCLUDE PROVISION OF ADEQUATE AISLEWAYS, SPRINKLE HEAD CLEARANCE, AND AVAILABILITY OF APPROVED ABC DRY CHEMICAL EXTINGUISHERS. IN THE EVENT OF IGNITION, DOUSE FOAM WITH LARGE VOLUMES OF WATER AND REMOVE FROM BUILDING.

7. On or about June 27, 2000, the Derderians installed foam on the walls and ceiling of the Nightclub. Subsequent inspections of the Nightclub by the Town of West Warwick Fire Department on November 21, 2000, November 10, 2001 and November 20, 2002 identified numerous building code violations including, among other things, fire extinguishers improperly placed, improperly tagged and in need of repair, exit doors in need of repair, emergency lights and exit signs not functioning or in need of bulbs, and broken panic hardware on exit doors. None of these post-June 27, 2000 inspections identified the readily apparent packing foam on the walls and ceiling of the Nightclub.

8. The Derderians' use of non-flame retardant flexible polyurethane foam such as GFC 36000XXX on the walls and ceilings of the Nightclub was illegal and violated **Rhode Island General Laws, Section 23-28.6-15** which states as follows: "(a) All combustible decorative and acoustical material including curtains, but not including floor coverings shall be rendered and maintained flame resistant in accordance with subsection (d). This regulation shall not be construed to prohibit the use of wall or ceiling coverings affixed directly to the wall or ceiling, which meet the requirements of subsection (e). Furnishings or decorations of an explosive or highly flammable character shall not be used."

9. The Station was licensed by the Town of West Warwick, RI as a nightclub, and the license specified an occupancy limit of 300 persons. On the night and at the time of the Fire, more than 300 persons occupied the Nightclub in violation of the Class C license and appropriate safety standards. But regardless of the limitation as to the posted occupancy guidelines, attendance at the time of the Fire exceeded ordinary

safety standards for emergency egress when considering the use of alcohol, lack of sprinklers, inadequate fire exits, and overcrowding.

10. **Rhode Island General Laws, Section 23-28.11** requires that anyone using pyrotechnics must possess and display permits issued by the West Warwick Fire Department prior to using pyrotechnics. There is no evidence that the Nightclub's owners, agents or employees, or the Great White band complied with this law prior to using pyrotechnics at the Nightclub on February 20, 2003. Neither is there evidence that the Nightclub's owners, agents or employees ever received or applied for a permit from the West Warwick Fire Department to possess or use pyrotechnics inside the Nightclub on February 20, 2003 as required by **Rhode Island General Laws 23-28.11-3**.

11. **Rhode Island General Laws 23-28.11-4** requires every person desiring to possess or display commercial fireworks and/or pyrotechnics to obtain a certificate of competency that attests to the applicant's experience and ability to conduct commercial fireworks and/or pyrotechnics demonstrations competently. There is no evidence that the Nightclub's owners, agents or employees, or the Great White band complied with this law prior to using pyrotechnics at the Nightclub on February 20, 2003.

12. The Nightclub's owners, agents and employees failed to manage, maintain, control, supervise and/or inspect the Nightclub and exits on the evening of February 20, 2003 prior to and during the Great White concert as required by **Rhode Island General Laws Section 23-28.6-2**.

13. The Nightclub's owners, agents and employees failed to install, maintain, inspect and manage the Nightclub in a proper workmanlike fashion so that the emergency lighting and exit signs were operable in the event of fire and or power outage on the evening of February 20, 2003 as required by **Rhode Island General Laws Section 23-28.6-13**.

14. If requested to do so, I reserve the right to offer additional opinions in this litigation as may be needed in future.

JOHN M. HOFFMANN, Ph.D.

STATE OF MICHIGAN)
) SS:
COUNTY OF MACOMB)

SUBSCRIBED AND SWORN to before me by John M. Hoffmann on this 29th day of April, 2004.

Notary Public, Robin L. Olowniuk
State of Michigan

My Commission Expires: 7/26/2004

ROBIN L. OLOWNIUK
NOTARY PUBLIC MACOMB CO., MI
MY COMMISSION EXPIRES Jul 26, 2004

UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GEORGE GUINDON, BARBARA GUINDON, Individually BARBARA GUINDON, as Mother and Next Friend to ERICAGUINDON, minor; TAMMY AYER, as Guardian and Next Friend to KAYLA MARIE DOROTHY ABBENANTE AYER, minor LOUIS ROSSI, as Administrator of the Estate of JOSEPH ROSSI; CHRISTOHER SCOT; JULIANA GIAVEN, ERIC MALARDO; MICHELLE MALARDO; RICHARD SANETTI; PATRICIA SANETTI; MICHELLE SPENCE, Individually, MICHELLE SPENCE, as Mother and Next Friend of Hailey Spence, minor; CATHERINE CARIGNAN, EDWARD CORBETT, III; PAUL AND BETTY ROE, Individually, PAUL AND BETTY ROE, as Co-Administrators of the Estate of LORI K. DURANTE; DANIEL DAVIDSON; and STEPHEN BRUNO; Plaintiffs	
VS.	C.A. NO.: 03-335-L
AMERICAN FOAM CORPORATION; FOAMEX INTERNATIONAL; BARRY H. WARNER; TRITON REALTY LIMITED PARTNERSHIP; JEFFREY DERDERIAN; MICHAEL DERDERIAN; DERCO, LLC; MANIC MUSIC MANAGEMENT, INC.; JACK RUSSELL, MARK KENDALL; DAVID FILICE; ERIC POWERS; DANIEL BICHELE; PAUL WOOLNOUGH; KNIGHT RECORDS INC.; ANHEUSER-BUSCH COMPANIES, INC.; MCLAUGHLIN & MORAN, INC., LUNA TECH, INC.; LUNA TECH PYROTECHNIC GMBH; CLEAR CHANNEL COMMUNICATIONS, INC., d/b/a WHJY-FM; MOTIVA ENTERPRISES, LLC; SHELL OIL COMPANY; TOWN OF WEST WARWICK, DENNIS LAROCQUE, STATE OF RHODE ISLAND and IRVING J. OWENS	

EXHIBITS TO AFFIDAVIT OF JOHN M. HOFFMAN, Ph.D FILED IN SUPPORT OF RULE 12(B)(6) MOTION TO DISMISS OF FOAMEX INTERNATIONAL, INC.

EXHIBIT 1:

General Foam Corporation invoice to American Foam.

See Affidavit at paragraph 6.

Defendants
FOAMEX INTERNATIONAL, INC.
By Its Attorneys,

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GUINDON CERTIFICATION

I hereby certify that on the 13th day of May, 2004, a true copy of the within was mailed to:

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EXHIBIT 1

GFC
Valmont Industrial Park
25 Jaycee Drive, West Hazleton, PA 18201-1193

NO. 02813

DATE 10-6-99

SHIP TO: American Foam Corp

BILL TO:

VIA Courier 888

OUR ORDER NO. 0273678 PART SH. ☐ PREPAID ☐

B/L #

YOUR ORDER NO. 21716 COMPL. SH. ☐ COLLECT ☐

	RUN # ROLL #	WIDTH	GAUGE HEIGHT	LENGTH	SQ. FT. YDAGE.	TYPE COLOR
878	8	54	24	84		36060322
2	14		21			
3	16		21			
4	12		22			
5	10		24			
6	9		24			
7	13		21.5			
8	7		23			
9						
10						
11						
12						
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14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						

	RUN # ROLL #	WIDTH	GAUGE HEIGHT	LENGTH	SQ. FT. YDAGE	TYPE COLOR
26	5972 19	54	22	114		36060322
27	3		22			
28	11		22			
29	10		22			
30	12		22			
31	14		22			
32	18		22			
33	4		22			
34	23		22			
35	21		22			
36	22		22			
37	1		22			
38	2		22			
39	17		22			
40	[illegible]		[illegible]			
41						
42						
43						
44						
45						
46						
47						
48						
49						
50						

	YARDAGE SQ. FT.	# PCS.	DESCRIPTION THICKNESS & WIDTH	COLOR—TYPE
1		8	54X84	36060322
2		14	54X114	36060322
6				

LOADER Lorenzo

CUSTOMER SIGNATURE

26-1841 2/99

"SEE IMPORTANT INFORMATION ON THE BACK OF THIS DOCUMENT"

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IMPROPER HANDLING OF FLEXIBLE POLYURETHANE FOAM DURING STORAGE OR USE MAY PRESENT A RISK OF FIRE. DO NOT EXPOSE POLYURETHANE FOAM TO POTENTIAL SOURCES OF IGNITION SUCH AS WELDING, BURNING CIGARETTES, CONTACT WITH NAKED LIGHTS, OPEN FLAMES, SPACE HEATERS, OR UNCONTROLLED BURNING OPERATIONS. IN THE EVENT OF IGNITION, POLYURETHANE FOAM MAY BURN RAPIDLY.

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FOR ADDITIONAL INFORMATION REGARDING STORAGE AND HANDLING CONTACT:

GENERAL FOAM
WEST 100 CENTURY ROAD
PARAMUS, NEW JERSEY 07652 - 1494

(201) 262-7500